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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

PEGGY BANKS, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

SUNRUN INC.

Defendant.

Case No.

4:24-cv-07877-JST

**JOINT CASE MANAGEMENT
STATEMENT**

JOINT CASE MANAGEMENT STATEMENT

Counsel for Plaintiff Peggy Banks (“Plaintiff”) and counsel for Defendant Sunrun Inc. (“Sunrun”) met and conferred on January 28, 2025, pursuant to Federal Rule of Civil Procedure 26(f), Civil local Rule 16-9, the Standing Order for All Judges of the Northern District of California: Contents of Joint Case Management Statement and the Court’s Standing Order. They hereby submit this Joint Case Management Statement.

1. Jurisdiction and Service:

This Court has federal question subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331 because the TCPA is a federal statute. *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 372 (2012). Sunrun has been served. No parties remain to be served. Venue is proper.

1 **2. Facts:**

2 Plaintiff's Statement

3 Plaintiff brings suit under the TCPA alleging that she was contacted without
4 her permission or her consent after being listed on the Do Not Call list. The Plaintiff
5 denies that she ever requested contact from SunRun as alleged below. The basis for
6 those claims is that the Plaintiff received at least thirty one calls from the telephone
7 number 909-475-3698 seeking to have her purchase SunRun's solar products and
8 services. Plaintiff alleges that she is a member of a class of individuals similarly
9 situated and seeks to have the matter brought as a class action suit. The Plaintiff is
10 seeking to represent the following putative classes of persons:

11 **Telephone Consumer Protection Act Do Not Call Registry Class:** All
12 persons in the United States whose (1) telephone numbers were on the National Do
13 Not Call Registry for at least 31 days, (2) but who received more than one
14 telemarketing calls from or on behalf of Defendant (3) within a 12-month period (4)
from the four years prior to the filing of the complaint through the date of trial.

15 The allegations in the Plaintiff's complaint are incorporated herein by
16 reference.

17 Sunrun's Statement

18 Sunrun denies that it placed any calls to Plaintiff in violation of the TCPA.
19 Sunrun's records indicate that Sunrun only called Plaintiff because she (or someone
20 acting on her behalf) requested to be contacted about quotes for solar energy and
21 provided the requisite permission to be contacted. Sunrun denies this case is
22 appropriate for class treatment.

23 **3. Legal Issues:**

24 Plaintiff's Statement

- 25 • Whether this case can be certified as a class action (FED. R. CIV. P. 23);
- 26 • Did SunRun make telemarketing calls to numbers listed on the National
- 27 Do Not Call Registry? (47 U.S.C. § 227(c))
- 28

1 • Did SunRun have consent to make such calls? (Consent is an affirmative
2 defense under the TCPA)

3 • Is there evidence that SunRun ever violated the Telephone Consumer
4 Protection Act? (Past evidence of similar conduct may be relevant to a finding that
5 the conduct was knowing and wilful to support an award of treble damages.)

6 Sunrun's Statement

7 The primary legal issues in this case are:

8 • Is Sunrun directly liable for the calls alleged in the Complaint?
9 • Did Plaintiff provide permission and/or the requisite consent to receive
10 the alleged calls?

11 • Was Plaintiff's phone number a residential telephone number?
12 • Can a class be certified when individual issues predominate in this case?
13 • Is Plaintiff an adequate and typical class representative?
14 • Is Plaintiff's counsel adequate?
15 • Did Sunrun knowingly or willfully violate the TCPA?
16 • Does Plaintiff face an immediate probability of future violative conduct
17 that would entitle her to an injunction?

18 • Whether Plaintiff can meet all of the elements to establish a claim under
19 the TCPA and its regulations?

20 • Whether Plaintiff's claims are barred by the TCPA's "safe harbor"
21 provisions or other "safe harbor" and/or affirmative defenses?

22 • Whether Plaintiff's claims must be dismissed for lack of sufficient injury-
23 in-fact to establish standing to pursue the claims asserted in the Complaint?

24 • Whether Plaintiff's claims are suitable for class treatment under Federal
25 Rule of Civil Procedure 23 and whether Plaintiff can satisfy each of the elements
26 under Federal Rule of Civil Procedure 23?

27
28

1 **4. Motions:**

2 Plaintiff's Statement

3 Defendant just filed a motion to strike class allegations, to which the Plaintiff
4 will respond in due course. The Plaintiff anticipates making a Motion for Class
5 Certification.

6 Sunrun's Statement

7 Sunrun anticipates filing a Motion for Summary Judgment. Sunrun may also
8 file a motion to affirmatively deny class certification, as well as discovery motions,
9 motions related to expert witnesses and motions *in limine*, if necessary.

10 **5. Amendment of Pleadings:**

11 The parties' proposed deadlines are in the table below.

12 **6. Evidence Preservation:**

13 The parties certify that their counsel have reviewed the Guidelines Relating to
14 the Discovery of Electronically Stored Information ("ESI Guidelines"), and confirm
15 that they have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding
16 reasonable and proportionate steps taken to preserve evidence relevant to the issues
17 reasonably evident in this action.

18 **7. Disclosures:**

19 The parties agreed to make their initial disclosures by the date in the table
20 below.

21 **8. Discovery:**

22 Plaintiff's Statement

23 Discovery has commenced and is in the early stages. In order to prove his case
24 as well as that of the Class, the Plaintiff will require discovery, generally speaking,
25 into the calling conduct at issue, including the calling records, which may be in the
26 possession of third parties and/or telephone companies. The Plaintiff strongly
27 opposes SunRun's attempts to bifurcate or otherwise limit discovery in this matter, as
28 such work is counterproductive and will force the Court and the Parties to replicate

1 their efforts. The Plaintiff will use such calling data to prove her claims as well as
 2 those of the class members, as well as to identify class members. The Plaintiff will
 3 also seek information related to any third parties which may have placed calls on the
 4 Defendant's behalf. Relatedly, and in order to meet any affirmative defence proffered
 5 by the Defendant, such as that of consent, the Plaintiff will need to seek information
 6 relating to Defendant's policies and procedures regarding compliance and enforcing
 7 employee and/or vendor compliance with the TCPA as well as putative classwide
 8 consent information. The TCPA also provides for treble damages if conduct is found
 9 to be knowing or wilful. Accordingly, the Plaintiff will need to seek information
 10 tending to show Defendant's negligence or wilfulness regarding TCPA violations.
 11 Additionally, the Plaintiff will seek information related to Defendant's telephone
 12 record ESI, including critical classwide calling data. The Plaintiff will also retain an
 13 expert to analyze classwide calling data once it is obtained to ascertain class members
 14 and which all class members were on the Do Not Call Registry. Discovery need not
 15 be conducted in phases or limited to or focused on particular issues. The parties do
 16 not anticipate needing a stipulated e-discovery order at this time.

17 Sunrun's Statement

18 Sunrun anticipates taking discovery on the following topics:

- 19 • Plaintiff's written and oral communications and interactions with Sunrun
 20 and/or any third-party that operated a website through which Plaintiff requested a
 21 quote for solar energy;
- 22 • Plaintiff's completion of web forms requesting quotes for solar energy;
- 23 • Whether Plaintiff sustained any injury-in-fact, or suffered any actual
 24 alleged damages;
- 25 • Plaintiff's consent to receive calls from Sunrun;
- 26 • Whether Plaintiff can meet all of the elements to establish a TCPA claim;
- 27 • Whether Plaintiff can meet the requirements of Rule 23;
- 28 • Whether Plaintiff's counsel can meet the requirements of Rule 23; and

- Any additional subjects as they arise in discovery.

a. Limitations or Modifications of Discovery Rules

The Parties agree that they will serve and accept service of discovery requests and responses electronically.

b. Proposed Discovery Plan

The Parties propose the schedule set forth in the table below.

c. Identified Discovery Disputes

No discovery has yet to come due. The Parties agree generally to meet and confer as to any future discovery disputes in order to try to narrow the scope of their disagreement and reduce the need for judicial intervention.

9. Class Actions:

The Parties propose the deadline for class certification in the table below. All attorneys of record have reviewed the Procedural Guidance for Class Action Settlements.

Plaintiff's Statement

This is a class action. The Plaintiff proposes to certify the putative class by reference to the Defendant's very own books and records, including calling records. The Plaintiff also anticipates using such records to disprove any affirmative defences on a classwide basis, such as that of consent.

Sunrun's Statement

Sunrun maintains that this action is not suitable for class treatment and that Plaintiff cannot satisfy the requirements of Federal Rule of Civil Procedure 23.

10. Related Cases:

Plaintiff's Statement

SunRun is being sued in this Court for similar illegal conduct in the case of *Strickland v. Sunrun Inc.*, No. 3:23-cv-05034 (N.D. Cal. 2024), currently pending before Judge Donato. Sunrun was also being sued for similar illegal conduct in federal courts across the country, including in *Hofvander v. Sunrun Inc.*, No. 1:24-cv-

02798 (N.D. Ill. filed Apr. 8, 2024), and *Bertram v. SunRun Inc.*, No. 2:23-cv-02215 (C.D. Ill. filed Apr. 24, 2024).

Sunrun's Statement

Sunrun disputes that the plaintiff's factual allegations in *Strickland v. Sunrun Inc.*, No. 3:23-cv-05034 (N.D. Cal. 2024) are related to the allegations with respect to Plaintiff in this this case. However, California counsel in this case and counsel in *Strickland* are impermissibly looking to represent overlapping classes, as discussed in Sunrun's pending motion to strike the class action allegations. Additionally, *Bertram v. Sunrun Inc.*, No. 2:23-cv-02215 (C.D. Ill.) was dismissed on April 24, 2024, and *Hofvander v. Sunrun Inc.*, No. 1:24-cv-02798 (N.D. Ill.) was dismissed on August 8, 2024. They are not active cases and they are not related to this matter. Sunrun denies any allegations that it violated the TCPA or any other law, in this case or any other matter.

11. Relief:

Plaintiff's Statement

The Plaintiff is seeking statutory damages between \$500 and \$1,500 per violation under the TCPA on behalf of herself and the putative class. For herself, the Plaintiff has incurred at least \$15,500 in damages for her claims alone. The remaining damages will depend on the size of the class and the number of calls made to each class member. These damages are set forth by statute in 47 U.S.C. § 227(c)(5)

Sunrun's Statement

Sunrun denies that Plaintiff is entitled to any relief and denies that Plaintiff has suffered any damages. Sunrun further denies that it violated the TCPA, or any other law. Sunrun denies that Plaintiff is entitled to injunctive relief, attorneys' fees, costs or expenses. And, Plaintiff's claims are not appropriate for class treatment.

1 **12. Settlement and ADR:**

2 Plaintiff's Statement

3 Settlement in this matter may be a possibility, but the Plaintiff requires initial
4 discovery into the nature, scope, and extent of the calling conduct at issue, including
5 the size of the putative class. Plaintiff has tendered a settlement offer. In such a case,
6 Plaintiff may be desirous of a relatively early, private mediation session in accordance
7 with Local Rule 3-5, which they will also would like to discuss before the Court.

8 Sunrun's Statement

9 The Parties have not yet engaged in ADR.

10 **13. Other References:**

11 This case is not suitable for reference to binding arbitration, a special master,
12 or the Judicial Panel on Multidistrict Litigation.

13 **14. Narrowing of Issues:**

14 Plaintiff's Statement

15 The parties have not yet identified any issues that can be narrowed by
16 agreement or by motion. The parties are willing to work cooperatively to develop
17 suggestions to expedite the presentation of evidence at trial (e.g., through summaries
18 or stipulated facts) once discovery has been conducted and as the parties prepare for
19 trial. As discussed above, the Plaintiff strongly opposes any attempts to bifurcate any
20 issues, claims, and defenses. The most consequential issue is this: **How many calls**
21 **were made to the Plaintiff and other putative class members? This issue can be**
22 **expedited through early, prompt, complete, and fulsome production of classwide**
23 **calling records.**

24 Sunrun's Statement

25 As set forth above, Sunrun anticipates filing a motion for summary judgment.
26 Sunrun submits that discovery should be stayed until its Rule 12 motion currently
27 pending before the Court is decided. If the Court disagrees, Sunrun submits that
28 discovery should commence with respect to Plaintiff's individual claims first.

15. Expedited Trial Procedure:

The Parties do not believe this matter is appropriate for the Expedited Trial Procedure.

16. Scheduling:

As previously noted, Sunrun takes the position that discovery should not commence until after its pending Rule 12 motion is decided. Plaintiff strongly opposes Sunrun's position and submits that a motion should be filed.

If the Court disagrees with Sunrun's position, the Parties are agreeable to the proposed schedule below.

Event	Proposed Deadline
Deadline to serve initial disclosures	February 18, 2025
Last day to join other parties and to amend pleadings	May 13, 2025
Deadline to conduct private mediation	July 4, 2025
Last day to exchange Federal Rule of Civil Procedure 26(a)(2) expert witness disclosures	July 14, 2025
Last day to exchange expert witness rebuttal reports	August 14, 2025
Last day for expert discovery	August 29, 2025
Discovery cut-off	August 29, 2025
Last day to file motion for summary judgment	October 17, 2025
Last day to file motion for class certification	October 24, 2025
Pretrial Conference	December 13, 2025
Trial	March 3, 2026

17. Trial:

1 The Parties anticipate that trial will last 2-5 days.

2 **18. Disclosure of Non-party Interested Entities or Persons:**

3 Plaintiff's Statement

4 N/A for Plaintiff. Although this is a class action, no person or entity is funding
5 the prosecution of any claim.

6 Sunrun's Statement

7 Sunrun has filed its Certification of Interested Entities or Persons.

8 **19. Professional Conduct:**

9 All attorneys of record for the parties have reviewed the Guidelines for
10 Professional Conduct for the Northern District of California.

11 **20. Such other matters as may facilitate the just, speedy and**
12 **inexpensive disposition of this matter:**

13 None at this time.

14 **SIGNATURE ATTESTATION**

15 The CM/ECF user filing this paper attests that concurrence in this filing has
16 been obtained from the other signatories.

17 Submitted for the Plaintiff,

18 /s/ Andrew Roman Perrong

19 Andrew Roman Perrong (PHV)

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26 Submitted for Defendant,

27 /s/ Glenn T. Graham

28 Glenn T. Graham

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